IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1618 OF 2003

Prabhu Nagnath Surve,
of Bombay Indian Inhabitant
residing at Building No. 1/C,
Flat No. 407, 4th Floor, Adarsh
Nagar, Kolbad, Thane. ... Petitioner

Versus

1. I.B.P. Company Limited,
Having its one of the offices
at Allahabad Bank Building,
Bombay Samachar Marg,
Fort, Mumbai 23.

2. The Central Government
Industrial Tribunal No. 1,
1st Floor, Shramraksha Bhavan,
Shivshrushti Road, Eastern
Express Highway, Sion,
Mumbai. ... Respondents

Mr. N.M. Ganguli for Petitioner.

Mr. A.H. Patel for Respondents.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 31, 2005

ORAL JUDGMENT :
. On behalf of the Petitioner, learned counsel impugns the award dated 10.6.2002 of the Central Government Industrial Tribunal No. 1. It has refused to interfere with the punishment of dismissal on the Petitioner herein.

. The Petitioner impugns the award briefly on the following counts.

. It is firstly pointed out that the Criminal Court in respect of the offences which is the subject matter of the chargesheet and on which the chargesheet was founded discharged the petitioner. Once the petitioner was discharged, the respondent employer could not have proceeded with the enquiry. Secondly, it is submitted that the punishment imposed considering the charge proved and the past service record is disproportionate and consequently has to be set aside. It is further submitted that if the past record was to be considered, the Petitioner ought to have been informed of the same so as to enable him to give his explanation. That has not been done and consequently, on that count, the punishment imposed was in violation of principles of natural justice and fair play and consequently also the punishment is liable to be set aside.

2. The Petitioner was in the employment of Respondent No. 1 company. The Petitioner was

earlier working in Indian Army and after his retirement joined the company on or about 18.6.1984 as watchman/security guard and was posted at Wadala terminal. A chargesheet came to be served on the Petitioner under Certified standing orders 25(d), 25(e), 25(l) and 25(m). The enquiry thereafter came to be held against the Petitioner. The Enquiry Officer by his findings dated 26.10.1994 was pleased to hold the Petitioner guilty of the following charges.

. The charges in so far as standing order 25(d) i.e. theft or dishonesty in connection with the employee's business or property; Standing Order 25(l); commission of an act subversive of discipline or good behaviour on the premises of the installation and Standing order 25(m) habitual neglect of work or gross or habitual negligence. The enquiry Officer accordingly submitted his report. By the letter dated 13.12.1994 a copy of the findings of the Enquiry Officer were forwarded to the Petitioner and the Petitioner was called upon to explain as to why appropriate punishment should not be imposed. The Petitioner by his reply

dated 30.1.1995 showed cause. By order dated 16.6.1995 the punishment by way of dismissal was imposed on the Petitioner with immediate effect.

3. On the matter being taken up in conciliation, Reference came to be made to the Central Government Industrial Tribunal. By Award dated 10.6.2002 the Tribunal was pleased to answer the Reference by holding that the action of the employer in terminating the services of the workman, Petitioner herein, from 16.2.1995 is legal and justified. The learned tribunal in Paragraph 6 framed three issues. The first such issue being as to whether the enquiry was vitiated as the workman was not given reasonable opportunity. The second issue framed was whether the findings arrived at by the Enquiry Officer are perverse and or based on no legal evidence and the issue was whether the competent authority could have awarded punishment of dismissal on the basis of the report of the enquiry officer even if it be acceptable in toto.

. In so far as findings on the first issue as canvassed before the learned tribunal from the

award it appears that it was contended that the enquiry Officer was biassed. The same was answered against the Petitioner herein and a further finding was recorded that the enquiry officer did not misconduct himself in the course of enquiry and accordingly the Tribunal answered the issue against the workman. In so far as the second issue is concerned, it related to two questions of findings of fact which were that the workman were guilty of misconduct and based on no legal evidence or otherwise or perverse. It was pointed out that in respect of the very same incident based on which chargesheet had been issued, the Additional Chief Metropolitan Magistrate discharged the Petitioner workman after having gone through the police papers in terms of the order dated 29.1.1995 in C.C. No. 137 of 1994. It was contended that the decision of the criminal court was binding on the tribunal. After considering the argument and scope of the domestic enquiry, the tribunal noted whether the misconduct is intimately extricable and intimately connected with crime, and were the charges in both the criminal cases and the enquiry overlap, then a clean or honourable acquittal may exonerate the

workman or the delinquent. The order of acquittal is merely a piece of evidence. On the facts of the case, the tribunal came to the conclusion that the discharge of the Petitioner would not amount to honourable acquittal and as such rejected that contention. An argument was advanced that finding in respect of Charge I, Charge III are perverse and finding in respect of Charge IV that the watchman was guilty of gross negligence is perverse. The learned tribunal noted the incident which took place on 2.1.1994 whereby one Laxmi was allowed to enter the premises which the workman was supposed to guard and she was clandestinely permitted to enter from the rear gate which was meant for use of the contractor of the employer. The allegation was that the workman spent some time with her and thereafter helped her to go out of the Tank Farm area from the rear Gate and while leaving, he handed over to her a ceiling fan belonging to one of the company's contractors and while the said rag-picker woman was trying to escape, she was apprehended by another security watchman of that area and was handed over to the police who were moving in a mobile patrolling jeep who happened to

pass from there. After considering the entire material the learned tribunal came to the conclusion that the charge was proved and that the tribunal was of the opinion that the enquiry officer could have reached the said conclusion as he did. The Tribunal held that the finding of fact is based on the preponderances of probabilities. The employer had examined seven witnesses whereas the workman chose not to examine himself in his own defence. In so far as issue of punishment is concerned, the tribunal observed that it cannot take a lenient view. The contention raised that the witness should not be appointed as Presiding Officer. But in view of the fact that the point was not raised and hence, thought it not necessary to decide the issue. This order is the subject matter of this petition.

4. At the hearing of the Petition, on behalf of the respondents, learned counsel has principally raised two contentions. It is firstly contended that criminal court in respect of the offences which is the subject matter of the chargesheet discharged the Petitioner. Once the petitioner was

discharged, the respondent employer could not have proceeded with the enquiry. The second contention urged is that the punishment imposed considering the charges proved and the past service record is disproportionate and consequently has to be set aside. If the past record was to be considered the petitioner ought to have been informed of the same so as to give him an opportunity. That has not been done and consequently on that count punishment imposed is in violation of principles of natural justice and fair play and consequently ought to be set aside.

5. We may consider the first contention as to whether merely because workman was discharged by the criminal court in criminal case would result in holding that the enquiry against the workman was without basis. In the first instance as rightly noted by the tribunal, the nature of evidence to be considered in the criminal enquiry and the requirement of proving the charge in the domestic enquiry are different. In the instant case, no doubt the Petitioner workman was discharged because the Criminal court on the record produced by the

police, came to the conclusion that no charge could be framed. Does that mean that because of this discharge the employer was precluded from holding a domestic enquiry in respect of the same charge or if an enquiry was held in view of the subsequent act of discharge, the enquiry to the extent of the offences under Indian Penal Code ought to have been dropped. The Apex Court in such matters has observed that if a court trained in law and after consideration of evidence of the witnesses arrives at the conclusion that the accused is not guilty, then ordinarily in respect of the same charges, no chargesheet be issued. This however, is not the position where the acquittal is based on benefit of doubt, where it is always open to the disciplinary authority to initiate disciplinary proceedings. The reason being that the requirement of proof in the case of domestic enquiry is different than in the case of criminal trial. The question then is what will be the position if the Petitioner was discharged. This issue came up for consideration in the case of Gajanan Babu Patil Versus State of Maharashtra 2005(3) All M.R. 565 where this court observed as under :

> "The Petitioner was discharged because the court come to the conclusion that on material placed before it, there was no case to frame charge. It therefore, cannot be said that the discharge would amount to acquittal. On the contrary, it will still be open in the departmental proceedings if new material becomes available, which was not before the criminal court, to base its findings on such material."

. Having said so, this court observed that the discharge cannot be placed on the same footing as honourable acquittal. In the instant case, seven witnesses were examined. Based on the said evidence,the Enquiry Officer came to the conclusion that the charges were proved. The Disciplinary authority concurred with the said findings. The Industrial tribunal has recorded a finding of fact that the charges have been proved and also rejected the contention that because the workman was discharged, the enquiry cannot be proceeded with.

We do not find that the award of the tribunal suffers from any error of law apparent on the face of record on that count and consequently the first contention has to be rejected.

6. The second contention which has been urged is regarding proportionally of the punishment. It is contended that the punishment is disproportionate and apart from that the Petitioner was not given an opportunity in so far as past service record is concerned. While imposing the punishment, the disciplinary authority has to consider the extenuating and attentuating circumstances; The past record basically would be record of the workman in the course of his service. In his reply to the show cause notice, the workman set out that he had worked for Indian Army for 17 years and for 10 years with the company and had caught two theft cases and tried to protect the interest of the company. In the matter of dismissal, the Disciplinary authority has observed that they have scrutinized the past record and had observed that there were no attenuating circumstances. The domestic enquiry has not been set aside on the

ground of failure to comply with the principles of natural justice and fair play and or Standing orders nor has the award been impugned on that count on the arguments advanced before this court. The tribunal considering the nature of the case and the fact that Petitioner was employed as security guard, in Para 12 of the impugned award, held that this was not a case where the tribunal ought to interfere with the punishment imposed by the disciplinary authority. Even if it was contended that the theft was not in respect of the company's property, still the fact remains that the property was within the precincts of the company and was removed out from the premises of the company with the Petitioner's knowledge, if not help. The involvement of the Petitioner in aiding the woman to take it out, has been held to be proved. In these circumstances, in a case where a workman was working as a Security Personnel, it will not be possible for this court to interfere with the punishment imposed in exercise of extra ordinary jurisdiction. The position of a person working in the security department is vital to protect the company's property.

. Hence, rule discharged. There shall be no order as to costs.

(F.I. REBELLO,J.)